SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY
WRIT APPEAL No. 981 OF 2006

BETWEEN

Habibunnissa Begum & others

.....Appellants

And

The Warangal Municipal Corporation,
Warangal rep. by its Commissioner,
Metwada, Warangal City

.....Respondent

Counsel for the appellants : Shri B.Narayana Reddy

Dated: 27.09.2006

::JUDGMENT::

Per G.S. SINGHVI, CJ

Having failed to persuade the learned Single Judge to entertain their prayer for issue of a mandamus to the respondent to allot land measuring 555.35 square yards (plot No.63) situated near Grain Market, Girmajipet, Warangal, the appellants have preferred this appeal under Clause 15 of the Letters Patent.

The Facts:

Sri Faiz Khan (since deceased) (husband of appellant No.1 and father of appellant Nos.2 to 4) was carrying on the activity of manufacturing cement pipes and tubes on Plot No.63 situated by the side of Grain Market, Warangal. He encroached land measuring 555.35 square yards, which belonged to Municipal Corporation, Warangal. In 1976, late Faiz Khan filed a suit for permanent injunction in the Court of Principal District Munsif, Warangal by alleging that he was being forcibly evicted from the land occupied by him. The same was registered as O.S.No.47 of 1976. The trial Court dismissed the suit and so was the fate of the first and second appeals preferred by late Faiz Khan. While dismissing Second Appeal No.430 of 1982, the learned Single Judge gave liberty to the appellant to approach the newly elected body of the Municipal Council for alienation of the land. For the sake of reference, the relevant portions of judgment dated 24.3.1987 passed by the learned Single Judge are reproduced below:

> "The adverse findings recorded against the appellant are pure findings of fact based upon acceptable and supported by cogent and convincing reasons and are, therefore, not open to attack. No question of law much less a substantial question of law arises for consideration in this second appeal.
>
> It is, however, open to the appellant to approach the newly elected Municipal Council,

Warangal for alienation of the suit plot to him on payment of price and as and when such a representation is made. I have no doubt that the same will be considered sympathetically as the appellant has been carrying on business in the suit site since a number of years.

The second appeal is dismissed. No costs."

It appears that immediately after dismissal of the second appeal, Sri Faiz Khan died, and in their capacity as legal representatives of late Faiz Khan, the appellants represented to the authorities of the Municipality to allot the piece of land which had been encroached by their predecessor. In response to one of their representations, Commissioner and Director of Municipal Administration, Andhra Pradesh, vide his letter dated 5.2.1991 instructed Commissioner, Municipal Corporation, Warangal to send proposal for allotment of land to the appellants. However, that communication did not culminate in a decision for sale of land to the appellants. Rather, Commissioner, Municipal Corporation, Warangal issued notice dated 10.2.1995 under Sections 405 and 406 of the Hyderabad Municipal Corporation Act, 1955 requiring the appellants to remove the encroachment.

The appellants challenged the aforementioned notice in Writ Petition No.2462 of 1995, but could not persuade the learned Single Judge to direct the respondent to alienate the land to them. The learned Single Judge took cognizance of the averments contained in the counter affidavit filed on behalf of the Corporation that the encroachment made by late Faiz Khan had been removed and possession has already been taken, and dismissed the writ petition by observing that the action taken by the authorities to remove the encroachment does not suffer from any legal infirmity.

We have heard learned counsel for the appellants and perused the record. In our opinion, the appellants do not have even a semblance of right much less a legal or vested right to seek allotment of land encroached by them and the mere fact that their predecessor and they have been in possession of the land for over 40 years cannot clothe them with a right to seek a mandamus for allotment of land and the Court cannot entertain their prayer by ignoring the fact that the encroachment has already been removed and possession of the disputed land taken by the Corporation authorities. Any such direction by the Court would be an ante-thesis of the doctrine of equality, which casts a duty on every public authority to dispose of public property either by auction or by draw of lots.

The observation made by the learned Single Judge in his judgment dated 24.03.1987 cannot enure to the appellants' benefit because the same did not create a right in their favour to seek allotment of the encroached land as of right. In any case, after removal of the encroachment and taking of possession of the disputed land by the Corporation authorities, the representations made by the appellants for alienation thereof will be deemed to have become infructuous and no direction can be issued to the respondent to allot the land to them.

In the result, the appeal is dismissed.

As a sequel to dismissal of the writ appeal, W.A.M.P.No. 2105 of 2006 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

27.09.2006
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